UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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OFFICE OF
ECOSYSTEMS,
TRIBAL AND PUBLIC
AFFAIRS

November 30, 2015

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Dear Ms. Bose:

The U.S. Environmental Protection Agency has reviewed the Draft Environmental Impact Statement (DEIS) for the Bear River Narrows Hydroelectric Project (FERC Project No. 12486) (Corps File No. NWW-2007-529-I01) and (EPA Number 92-098-FRC), located in Franklin County, Idaho. Our review and comments are pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Qualtiy regualtions (40 CFR Parts 1500-1508), and our NEPA review authority under Section 309 of the Clean Air Act.

The Bear River Narrows Project would be located on the main stem of the Bear River in Franklin County, about 9 miles northeast of the city of Preston, Idaho. It would occupy 243 acres of federal land administered by the U.S. Department of the Interior, Bureau of Land Management.

Twin Lakes Canal Company (Twin Lakes) proposes to construct a 109-foot-high dam that would form a 362-acre reservoir with a total storage capacity of 12,647 acre-feet of water. The proposed powerhouse would have an installed capacity of 10 megawatts and would generate an average of 48,531 megawatt-hours of energy annually. The reservoir would also be used to provide up to 5,000 acre-feet of water to Twin Lakes' irrigation system during dry years. To accomplish this, supplemental water would be released at the dam and pumped into the irrigation system at a new pumping station located downstream of the dam.

The DEIS analyzes Twin Lakes' proposal, as well as three alternatives: (1) no-action, whereby the project would not be licensed and constructed; (2) the applicant's proposal with staff modifications; and (3) the staff licensing alternative with mandatory conditions filed by BLM. The staff's recommendation is to not license the project (Alternative 1, no-action).

Based on our review of the analysis, we concur with the FERC Staff conclusion that the overall, unavoidable adverse environmental effects of the action alternatives would outweigh the power and water storage benefits of the project. We are rating the preferred alternative (license denial) as *Lack of Objections* (LO; see enclosed "Summary of EPA Rating Definitions").

Although we support the conclusions reached in the DEIS relative to the environmental impacts of the proposed project, our review did identify regulatory and analytical gaps that should be addressed as the document is finalized. Specifically, the document lacks information necessary for us to determine

compliance with our statutory and regulatory requirements under the Clean Water Act (Sections 404 and 303). The document also lacks detail on the conceptual mitigation plan, making it impossible to determine whether the Ben Johnson Family Farm site is a viable mitigation site. Finally, the document lacks an analysis of climate change impacts consistent with the 2014 revised draft guidance from the Council on Environmental Quality.[1] According to EPA policy, we rate environmental impact statements based on the preferred alternative. We note that had the Bear River Narrows DEIS identified one of the action alternatives as the preferred alternative, the data gaps noted above would have led EPA to rate the document as "Inadequate."

The attached comments provide further detail on EPAs concerns and recommendations. If you have questions about our comments, please contact me at (206) 553-1601 or by electronic mail at littleton.christine@epa.gov. Specific NEPA-related questions can also be directed to Teresa Kubo of my staff at or (503) 326-2859 or by electronic mail at kubo.teresa@epa.gov. Specific questions regarding compliance with CWA Section 404 can be directed to Tracy DeGering in our Idaho Operations Office at (208) 378-5756 or degering.tracy@epa.gov.

Sincerely,

Christine B. Littleton

Christine B. Littleton, Manager
Environmental Review and Sediment Management Unit

Enclosures:
1. EPA Region 10 Detailed Comments on the Bear River Narrows Hydroelectric Project DEIS (FERC Project No. 12486)
2. U.S. Environmental Protection Agency Rating System For Draft Environmental Impact Statements

cc (via email):
Clair Bosen, Twin Lakes Canal Company (contact@twinlakescanalcompany.com)
Nicholas Josten, GeoSense (gsense@cableone.net)
Robert Brochu, U.S. Army Corps of Engineers (Robert.A.Brochu@usace.army.mil)
Shana Murray, FERC (Shana.Murray@ferc.gov)
Lynn Van Every, IDEQ (Lynn.Vanevery@deq.idaho.gov)

[1] https://www.whitehouse.gov/sites/default/files/docs/nepa_revised_draft_ghg_guidance_searchable.pdf

EPA Region 10 Detailed Comments on the
Bear River Narrows Hydroelectric Project DEIS (FERC Project No. 12486)
November 25, 2015

Clean Water Act Compliance

Section 1.3 of the DEIS (Statutory and Regulatory Requirements, p. 5) states that a license for the Bear River Narrows Project is subject only to Section 401 of the Clean Water Act (CWA). Absent from the DEIS is explicit acknowledgement and discussion of Twin Lake Canal Company's requirement to also comply with CWA Sections 303 and 404, despite indications that this is generally understood.[2] The EPA Region 10 offers the below comments for the record, and strongly recommends that FERC address these issues in the Final EIS.

Clean Water Act Section 303

In the analysis of soil erosion and remobilization from mud flats exposed during drawdowns under 100-year high flow events (DEIS pages 39-42) it is estimated that a maximum of 8.6 milligrams per liter (mg/L) total suspended solids (TSS), or 17 nephelometric turbidity units (NTU) would be added to the Bear River downstream of the Bear River Narrows dam. Because 17 NTU is less than the water quality criteria for the state of Idaho (50 NTU above background for instantaneous conditions, and an average of 25 NTU above background for more than 10 consecutive days), the DEIS concludes that the addition of 17 NTU from sediment eroded from the Bear River flats would be within water quality standards.

We are concerned that little examination is given to the potential effects of increased turbidity on water quality above the dam within the reservoir. The erosion of the exposed flats may cause turbidity in the upper reservoir to exceed state water quality standards under 100-year (and likely less extreme) flow conditions. In the absence of the reservoir, sediment would be transported at much lower concentrations down the river and would not accumulate to such a degree as it would in a slack pool. Further, in the absence of the reservoir, the mudflats would not be subject to such severe erosion.

Dissolved oxygen (DO) is another parameter of concern. We concur with commenters who have raised concern over the lack of detail and reliability of measures within Dissolved Oxygen Management Plan to raise DO levels in the anoxic discharge waters. Further, we note that even if the proposed facility were consistently able to achieve the State DO standard (6 mg/l) in the discharge water, monitoring data from the Bear River (Fig. 3-7) shows that DO levels are now above this level all the time, and usually well above this level. Consequently, while the discharge might meet state standards with implementation of a DO Management Plan, it would nonetheless represent a net degradation of water quality as compared to current conditions, particularly late summer through winter.

Lastly, we concur with concerns raised over assumptions used in nutrient modeling (DEIS page 103). By assuming no release of phosphorous from sediment in the reservoir, the nutrient model may under-predict total phosphorous in the Bear River. Under anoxic conditions, phosphorous would be liberated from sediment to the water column. This would not occur in the undammed river due to aerobic conditions. Building a reservoir would result in some total phosphorous being converted to soluble (biologically available) phosphorous, and therefore much more readily available for algal growth. It also

[2] "...any project-related effects on these [wetland] areas are subject to the Corps' section 404 regulations" (p. 148).

does not appear that the DEIS evaluated in-reservoir effects of nutrients (such as harmful algal blooms or algal blooms that might not be consistent with Idaho narrative water quality standards).

Recommendations:

- We recommend that potential water quality problems in the reservoir from soil erosion and remobilization from mud flats exposed during drawdowns under 100-year high flow events be analyzed in the FEIS.
- We recommend that the FEIS discuss the potential for net degradation to dissolved oxygen conditions in the Bear River.
- We recommend the FEIS consider the potential effects associated with increases in soluble phosphorous (in the reservoir and downstream) due to reservoir construction.

Clean Water Act Section 404

CWA Section 404(b)(1) Guidelines

Section 404 of the CWA established the permitting program for the discharge of dredged and fill material into waters of the United States (U.S.) at specified disposal sites. This program is co-administered by the U.S. Army Corps of Engineers (Corps) and EPA. Section 404(b)(1) required the EPA, in conjunction with the Corps, to develop guidelines for the specification of disposal sites. The guidelines, referred to as the 404(b)(1) Guidelines, were to be patterned after the ocean discharge criteria developed by Congress and included in the CWA.

The purpose of the Guidelines is to restore and maintain the chemical, physical, and biological integrity of waters of the U.S. through control of discharges of dredged or fill material. They were codified in regulation (40 CFR Part 230) in 1980 and form the substantive environmental criteria used by the Corps when they review proposed discharges and issue permits under Section 404. The Guidelines prohibit issuance of a permit that would cause an avoidable or significant adverse impact to waters of the U.S.

Compliance with the Guidelines is required before a 404 permit can be issued by the Corps, and demonstrating compliance is the responsibility of the applicant. Section 230.10 contains the four principle requirements for compliance. Failure to "clearly demonstrate" that there is no "practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem", in accordance with § 230.10(a), renders the project noncompliant with the Guidelines. Similarly, *if an application contains insufficient information to determine compliance, the Guidelines require that no permit be issued* (emphasis added).

The EPA acknowledges that the staff's preferred alternative is the no-action alternative, but since the Commission could still approve the issuance of an original hydropower license, we feel it necessary to emphasize these stipulations.

Alternatives Analysis

Pursuant to §230.10(a), an alternatives analysis is conducted to identify practicable alternatives to a proposed discharge. An alternative is practicable if it is available and capable of being done and would achieve the overall project purpose. Practicable alternatives with fewer adverse impacts are presumed to exist for non-water dependent activities unless "clearly demonstrated otherwise." The environmental impacts of the various practicable alternatives are then compared so that the Corps can ensure it is authorizing only the practicable alternative which generates the least environmental damage. This

alternative is referred to as the Least Environmentally Damaging Practicable Alternative (LEDPA). Except as permitted under Section 404(b)(2), the Guidelines prohibit the authorization of any alternative that is not the LEDPA.

NEPA requires the evaluation of *reasonable* alternatives, defined by the Council on Environmental Quality as those that are practicable or feasible from a technical and economic standpoint and those that achieve the project's purpose and need. In contrast, the Guidelines require the analysis of *practicable* alternatives, and *the analysis required by the Guidelines is not limited to the alternatives evaluated in the NEPA document* (emphasis added). The identification of practicable alternatives to be analyzed is constrained only by the definition of practicable alternative (see "Definition of Practicability" below).

Overall Project Purpose

Prior to the issuance of any 404 permit, it is the responsibility of the Corps to identify the overall project purpose, who shall, "*in all cases, exercise independent judgement in defining the purpose and need for the project from both the applicant's and public's perspective*" (33 CFR 325 Appendix B, Section 9(b)(4)). The overall project purpose, as identified by the Corps, is independent of the project purpose and need identified in NEPA documents.

Over the years, the stated purpose and needs for this project have changed.

- In 2010,[3] the stated needs were:
    1. To supply water to dry land, for which there are water rights held by Twin Lakes Canal Company;
    2. To fully utilize these water rights, requiring "late year" water storage (unavailable due to the freezing canals in winter);
    3. Upgrading the current delivery system; and
    4. A revenue system to fund these improvements.

- In 2011 and 2013,[4] the stated needs were:
    1. To provide additional irrigation water to its shareholders;
    2. A cost-effective water storage facility capable of providing up to 5,000 acre-feet of water annually for irrigation use;
    3. A physical location to store additional water that is geographically connected with the existing Twin Lakes water rights and water conveyance system; and
    4. An integrated hydropower facility to provide revenue to fund construction of the necessary facilities.

- In 2015,[5] the stated needs are:
    1. To provide a new source of hydroelectric power and water storage for irrigation;
    2. To provide up to 5,000 acre-feet of water to its shareholders in dry years when water available for irrigation is limited;
    3. To provide revenue to fund construction of the water storage reservoir; and

[3] Based on a September 8, 2010 meeting between Mr. Clair Bosen (Twin Lakes Canal Company), Mr. Nicholas Josten (GeoSense), Mr. Rob Brochu (Corps), Ms. Teresa Kubo (EPA), and Ms. Carla Fromm (EPA).
[4] Based on the September 2011 Draft and November 2013 Final FERC License Application submitted by Twin Lakes Canal Company.
[5] DEIS pp. 2, 3.

4. A short and long term need for power in the project area as coal-fired facilities are retired.

We believe that the data provided to demonstrate these stated project needs continues to be inadequate. It is plausible that the Twin Lake Canal Company's irrigation water delivery system is in need of repairs, but it is less obvious to what degree they are in disrepair, the various ways in which the system could be modified, which of these alternatives are practicable, and the environmental impact(s) associated with each. It remains unclear why these upgrades must be funded solely through the sale of hydropower, where the 5,000 acre-feet figure was derived, and why constructing a reservoir is the only practicable alternative to providing irrigation water to its shareholders. As currently proposed, the project would irreparably damage aquatic resources, in order to achieve the end goals of providing water storage and financing the upgrade of an existing canal system. The construction of the dam would be a means to an end; there is no demonstrated need for the hydroelectric power generated by this project.

The EPA understands that FERC's role in this case is limited to regulating hydropower projects, but given the multiple stated needs of the project, we believe the EIS must evaluate alternatives other than constructing a dam in waters of the U.S. Limiting the range of alternatives strictly to hydropower projects or the no-action alternative does not capture the range of alternatives that would meet the multiple needs. We recommend that the Final EIS include a discussion of alternatives beyond the jurisdiction of the lead agency.[6]

Additionally, "providing irrigation water to shareholders" is not a water dependent project, as it does not require access or siting within a special aquatic site to fulfill the basic purpose, which is to say, the mere delivery or transport of water does not require a discharge of dredged or fill material into waters of the U.S. In the case of non-water dependent projects, practicable alternatives that do not involve special aquatic sites are presumed to be available, unless clearly demonstrated otherwise.[7]

Definition of Practicability

"An alternative is practicable if it is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes."[8] As noted above, the overall project purpose plays a critical role in determining whether or not a particular alternative is practicable. The consideration of cost, existing technology, and logistics is to determine whether one or more of these factors render an alternative unavailable and/or incapable of being done. This is a very high standard, and an alternative must be demonstrated to be impracticable before it can be excluded from analysis.

The purpose of consideration of cost is not to compare the cost of different alternatives but to determine whether or not the costs of a specific alternative are so prohibitively high (beyond industry standard) that the alternative is rendered unavailable and incapable of being done. As stated in the preamble to the Guidelines: "The consideration of cost is not an economic analysis." "The mere fact that an alternative may cost somewhat more does not necessarily mean it is unreasonably expensive and therefore not practicable" (45 FR 85339).

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[6] 40 CFR § 1502.14(c).
[7] 40 CFR § 230.10(a)(3).
[8] 40 CFR § 230.10(a)(2)

The consideration of existing technology and logistics are handled similarly to that of cost. For example, an alternative which requires the use of advanced (but existing) technology that is available and capable of being done (e.g., horizontal directional drilling versus trenching) is a practicable alternative. Similarly, an alternative which is logistically more complex but is still available and capable of being done is a practicable alternative.

Compensatory Mitigation
A 1990 Memorandum of Agreement between the EPA and the Department of Army established a three-part process, known as the mitigation sequence, to help guide mitigation decisions and determine the type and level of mitigation required under CWA Section 404 regulations. Compensatory mitigation is the third step in that sequence:

> Step 1. Avoid - Adverse impacts to aquatic resources are to be avoided and no discharge shall be permitted if there is a practicable alternative with less adverse impact.
>
> Step 2. Minimize - If impacts cannot be avoided, appropriate and practicable steps to minimize adverse impacts must be taken.
>
> Step 3. Compensate - Appropriate and practicable compensatory mitigation is required for unavoidable adverse impacts which remain. *The amount and quality of compensatory mitigation may not substitute for avoiding and minimizing impacts* (emphasis added).

Until the Twin Lakes Canal Company has conducted a 404(b)(1) alternatives analysis, clearly demonstrating that all appropriate and practicable steps have been taken to avoid and minimize adverse impacts, it is premature to propose compensatory mitigation to offset remaining unavoidable losses of aquatic resources. The EPA cannot comment on whether the proposed mitigation plan complies with the joint Corps-EPA 2008 Final Mitigation Rule[9] until the first two steps in the mitigation sequence have been satisfied.

Summary
The Guidelines explicitly state that *"no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences"* (40 CFR §230.10(a)). In previous letters, the EPA has consistently commented on the alternatives analysis requirements under NEPA and the CWA.[10] Therefore, our expectation is that an adequate EIS would include such an analysis.

Recommendations:

- We recommend that the Final EIS include a discussion of alternatives beyond the jurisdiction of the lead agency.
- We recommend that the FEIS include a discussion of CWA Section 404, including alternatives analysis under the 404(b)(1) Guidelines.

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[9] 40 CFR § 230 Subpart J.

[10] Letters dated July 20, 2009 (addressed to Mr. Clair Bosen, Twin Lakes Canal Company); January 7, 2011 (addressed to Mr. Clair Bosen, Twin Lakes Canal Company); December 8, 2011 (addressed to Ms. Kimberly Bose, Federal Energy Regulatory Commission); and December 15, 2014 (addressed to Ms. Kimberly Bose, Federal Energy Regulatory Commission).

Ben Johnson Family Farm

The EPA concurs with FERC staff regarding the unsuitability of the Ben Johnson Family Farm as a mitigation parcel. Specifically, we concur that there is a lack of clarity around potential impacts to cultural resources, the availabilty of water rights, and the potential of the site to support healthy and robust wetland and riparian habitat.

National Historic Preservation Act Concerns

As noted on page 262 of the DEIS, the Ben Johnson Family Farm site includes the southern portion of the Bear River Massacre Site National Historic Landmark and may contain significant components of the Bear River Massacre Site, including the original confluence area where Beaver Creek (now Battle Creek) entered Bear River. Buried archaeological components of the massacre site, as well as other pre-contact archaeological occupation/village components may lie in the Johnson Family Farm site.

As noted on page 260 of the DEIS, both the Shoshone-Bannock Tribes and the Northwestern Band of the Shoshone Nation consider the project area to be culturally important. Elements of the Bear River Massacre Site National Historic Landmark can be considered potential Traditional Cultural Properties or TCPs, which would have components that are of traditional religious and cultural importance to the Northwestern Band of the Shoshone Nation and Shoshone-Bannock Tribes, and to tribal members of the Eastern Shoshone and Shoshone-Paiute Tribes.

Because the Ben Johnson Family Farm site is currently under private ownership and Twin Lakes has not received permission to access the site for detailed data collection, it cannot be known to what extent excavation associated with restoration activities might affect cultural resources at the site. It also cannot be known to what extent the presence of historic or cultural resources at the Johnson site may affect the design and implementation of the Historic Properties Management Plan.

Water Right

Twin Lakes proposes to enhance existing marsh and riparian habitat currently existing on the Ben Johnson Family Farm property. Restoration efforts would focus on changes in land management, hydrology, and active planting. Twin Lakes expects to acquire sufficient water rights with the property to provide 20 cfs of water to the project. As noted by FERC staff, there is significant uncertainty over whether Twin Lakes would have legal access to suitable water rights, or even whether water rights totaling 20 cfs exist in conjunction with the property. Consequently, it is impossible to quantify any potential benefits to habitat that could be achieved on the Ben Johnson Family Farm site.

Site capability

Twin Lakes proposes to enhance existing riparian areas by under-planting existing Russian olive-dominated riparian forest with native species. Russian olive should not be considered as any component of a riparian restoration strategy. Russian olives have little habitat value, have a deeper root system and a greater need for water than native vegetation. This could affect local hydrology and compromise the ability of native vegetation to establish. In addition, research is demonstrating that Russian olive dominated riparian areas export more nutrients and carbon to downstream rivers and reservoirs, potentially exacerbating nutrient problems in those waterbodies.[11]

[11] Mineau, M., Baxter C., Marcarelli, A., and G. Minshall. 2012. An invasive riparian tree reduces stream ecosystem efficiency via a recalcitrant organic matter subsidy. Ecology, 93(7), 2012, pp. 1501–1508

Recommendation:
Under NEPA, the Draft EIS must include a discussion of the "means to mitigate adverse environmental impacts."[12] To ensure that the environmental effects of a proposed action are fairly assessed, the probability of implementation of the mitigation measures must be discussed.[13] This should consider the economic, environmental, logistical, technological, legal, and social feasibility of each mitigation. This requirement under NEPA is separate and apart from the compensatory mitigation under section 404 of the Clean Water Act discussed above.

Due to the social, environmental, and legal factors discussed above, we concur with FERC staff that the Ben Johnson Family Farm site does not represent a suitable mitigation parcel. While EPA favors the staff recommended alternative (license denial), we believe that it is important to go on record noting that the lack of analysis of a suitable mitigation proposal for the action alternatives in the DEIS represents a data gap that affects the documents overall adequacy.

Climate Change Impacts
On December 24, 2014, the Council on Environmental Quality revised draft guidance for public comment that describes how federal departments and agencies should consider the effects of greenhouse gas emissions and climate change in their analyses under NEPA[14]. This draft guidance explains that agencies should consider both the potential effects of a proposed action on climate change, as indicated by its estimated greenhouse gas emissions, and the implications of climate change for the environmental effects of a proposed action.

The DEIS does not address potential cumulative effects of climate change on the project area and how this may affect future conditions in the Bear River and its tributaries. Nor does the DEIS address the potential effects of climate change on the performance and effects of the Action Alternatives. While it may be difficult to predict specific climate change effects, they should be identified and discussed to the extent available information allows.

Possible effects on the proposed project could include average temperature increases in spring with earlier initial and maximum snow melt and higher water levels; changing precipitation patterns with more rain and less snow in winter, causing winter stream flows to increase; decreased snowpack and altered timing of spring runoff; larger and more severe storms; warming temperatures and more severe drought with increased risk of warmer stream temperatures negatively affecting aquatic organisms and fish species such as the Bonneville Cutthroat Trout (BCT).[15] The FERC Staff Analysis assumes that there would be, on average, seven rain storms per year that would deposit more than 0.5 inches of rain (DEIS p. 41). Climate change may influence the timing, recurrence, and intensity of those storms.

Recommendation
While EPA favors the staff recommended alternative (license denial), we believe that it is important to go on record noting that the lack of analysis of climate change in the DEIS represents a data gap that affects the document's overall adequacy. We recommend that the Final EIS include a discussion of climate change and its potential effects on the Action Alternatives, and on their potential performance and impacts.

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[12] 40 CFR 1502.16(h)
[13] CEQ Forty Questions no. 19(b) https://ceq.doe.gov/nepa/regs/40/40p3.htm
[14] https://www.whitehouse.gov/sites/default/files/docs/nepa_revised_draft_ghg_guidance_searchable.pdf
[15] http://nmconservation.org/dl/SWCCI-BearRiver-Climate-Adaptation-Wkshp-FINAL-Report-Nov-2010.pdf

U.S. Environmental Protection Agency Rating System for
Draft Environmental Impact Statements
Definitions and Follow-Up Action*

Environmental Impact of the Action

LO – Lack of Objections

The U.S. Environmental Protection Agency (EPA) review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

EC – Environmental Concerns

EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce these impacts.

EO – Environmental Objections

EPA review has identified significant environmental impacts that should be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no-action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

EU – Environmentally Unsatisfactory

EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potential unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the Council on Environmental Quality (CEQ).

Adequacy of the Impact Statement

Category 1 – Adequate

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis of data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

Category 2 – Insufficient Information

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses or discussion should be included in the final EIS.

Category 3 – Inadequate

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the National Environmental Policy Act and or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

* From EPA Manual 1640 Policy and Procedures for the Review of Federal Actions Impacting the Environment. February,